

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

RICHARD NIEDERHOFFER

Plaintiff

-against-

THE ROCKEFELLER UNIVERSITY

Defendant

Index No.

Date Summons Filed:

SUMMONS

Plaintiff designates New York County
as the place of trial

The basis of venue is Defendant's
residence

**Child Victim's Act Proceeding
22 NYCRR 202.72**

To the above-named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this summons, exclusive of the day of service, (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
August 20, 2019

**THE LAW OFFICES OF
LAWRENCE A. BECKENSTEIN, P.C.**

By:


LAWRENCE A. BECKENSTEIN, ESQ.
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To: THE ROCKEFELLER UNIVERSITY
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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**-----X
RICHARD NIEDERHOFFER

Index No.

Plaintiff,

COMPLAINT

-against-

**Child Victims Act Proceeding
22 NYCRR 202.72**

THE ROCKEFELLER UNIVERSITY

Defendant
-----X

Plaintiff, by and through his attorneys, the Law Offices of Lawrence A. Beckenstein, P.C. respectfully alleges for his Complaint the following:

PRELIMINARY STATEMENT

1. Defendant The Rockefeller University ("Rockefeller"), a world-renowned medical research institution, knew and should have known for decades that one of its leading doctors, Reginald MacGregor Archibald ("Archibald"), was sexually abusing minor patients under the guise of a child growth study and/or the performance of necessary medical treatment. Indeed, Rockefeller conceded in a recently released investigatory report that Archibald, while purportedly offering patients cutting edge medical care and treatment, engaged in a "pervasive" and "widespread pattern of misconduct and sexually abused many children at the Hospital...." *Report on the Investigation of Dr Reginald Archibald* (May 23, 2019) ("Report"), attached as Exhibit "A".¹

2. Rockefeller also admitted that by 1974, it was aware of numerous patient

¹ Many of the allegations in this Complaint are taken from the Report which was written by Debevoise & Plimpton LLP, Rockefeller's outside counsel. According to the Report, it "summarizes evidence obtained about allegations that Dr. Reginald Archibald, a former professor and senior physician at The Rockefeller University and its Hospital, sexually abused patients he saw at the Hospital." Such allegations are identified with citations to the Report.

complaints against Archibald including a 1960-1961 grand jury investigation of which Rockefeller's President was notified, and several additional complaints from 1960 to 1974 to Rockefeller's Physician-in-Chief by patients, patients' family members, and staff about Archibald's unnecessary examinations of children's genitals and other sexual misconduct. Report, pp. 12-13, 19. In addition, Rockefeller had information while Archibald was still practicing which indicated that Archibald "may have been engaged in misconduct and inappropriate and unnecessarily intrusive examinations of at least some of his patients." Report, p. 26. Further, Rockefeller failed to comply with required Institutional Review Board policies and procedures.

3. Despite these repeated complaints and other warning signs, Rockefeller knowingly and recklessly discounted and disregarded Archibald's abuse, concealed Archibald's abuse and/or engaged in conduct to protect its reputation, status and wealth, in disregard of the welfare of the children in its custody, care, and control.

4. Rockefeller permitted Archibald unfettered, unsupervised access to children, failed to warn children and/or their parents of Archibald's misconduct, and exposed Plaintiff RICHARD NIEDERHOFFER to unreasonable risk of danger.

5. The Plaintiff in this lawsuit is one of the children who was sexually abused because of the wrongful conduct of Rockefeller and Archibald.

PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

6. This Complaint is filed pursuant to the Child Victims Act ("CVA"), CPLR 214-g, and 22 NYCRR 202.72. The CVA opened a historic one-year, one-time window for victims and survivors of historic childhood sexual abuse in the State of New York to pursue lapsed claims. Prior to the passage of the CVA, Plaintiff's claims against Rockefeller were time-barred the day he turned 22 years old. The enactment of the CVA allows Plaintiff to pursue restorative justice in New York State.

THE PARTIES

7. Plaintiff RICHARD NIEDERHOFFER is an adult male who currently resides in Tigard, Oregon. When Plaintiff was a child, he was a patient of Archibald's at Rockefeller.

8. Upon information and belief, defendant Rockefeller, which was formerly known as The Rockefeller Institute for Medical Research, is a New York not-for-profit education corporation with its principal place of business in New York, New York.

9. Upon information and belief, at times Rockefeller conducted business as the "Rockefeller Institute", "Rockefeller University" or "Rockefeller University Hospital" (hereinafter collectively referred to and included in the definition of "Rockefeller").

10. Upon information and belief, at all relevant times, Rockefeller employed Archibald as a professor and physician.

11. To the extent that Rockefeller was or became a corporation on or after January 1, 1940, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

12. To the extent Rockefeller is a successor to a different entity, corporation, or organization which existed on or after January 1, 1940, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

13. All such entities, corporations, and/or organizations are collectively referred to herein as Rockefeller.

VENUE

14. Venue is proper because Rockefeller is a domestic corporation authorized to transact business in New York with its principal office located in New York, New York. Venue is proper because New York is the county in which a substantial part of the events or omissions giving rise to each of Plaintiff's claim occurred.

BACKGROUND FACTS

15. For approximately 40 years, from the 1940s to the 1980s, Archibald was employed at Rockefeller as a prominent and esteemed professor and physician engaged in a long-running child growth study and providing free medical care to children.

16. Upon information and belief, Archibald examined approximately 9,000 children at Rockefeller.

17. As Rockefeller recently admitted, Archibald spent much of his time at Rockefeller grossly, extensively, and repeatedly sexually abusing the child patients entrusted to his care. *See Report, pp. 1-2, 26.*

18. As detailed in the Report and explained below, years before Plaintiff was abused by Archibald, Rockefeller's senior management knew or should have known that Archibald had sexually abused and continued to sexually abuse many of their child patients.

19. In or around 1960, two former patients of Archibald complained to the New York District Attorney about Archibald's misconduct at Rockefeller. Report, pp. 12-13.

20. In response to these complaints, a grand jury issued a subpoena to Rockefeller for the medical records of those two patients and then presented the matter to the grand jury. Report, pp. 12-13.

21. Although an indictment was apparently not returned, Rockefeller's then-President was familiar with those serious allegations and criminal investigation. Report, pp. 12-13.

22. Upon information and belief, despite Rockefeller senior management's knowledge of these serious allegations, Rockefeller took little or no action to investigate Archibald's activities and failed to put in place any measures to protect its child patients.

23. From 1960 to 1974, Rockefeller's Physician-in-Chief received several complaints from patients, family members, and staff about Archibald's examination of their child patients' genitals. Report, p. 13.

24. That Physician-in-Chief viewed Archibald's practice of taking genital measurements of his child patients as a "questionable" medical practice. Report, p. 13.

25. Archibald, when confronted with these allegations, "became difficult" and "less communicative." Report, p. 13.

26. Upon information and belief, despite the numerous complaints to Rockefeller's Physician-in-Chief, and Archibald's evasive responses to questioning, Rockefeller took little or no action to investigate Archibald's activities and failed to put in place measures to protect its child patients.

27. During the decades of Archibald's employment at Rockefeller, there were "warning signs" and "information available [to Rockefeller] and [Rockefeller] management" that "suggest[ed] that Archibald may have been engaged in misconduct and inappropriate and unnecessarily intrusive examinations of at least some of his patients." Report, p. 26.

28. Upon information and belief, Rockefeller disregarded these warning signs and information, taking little or no action to investigate Archibald's activities and failed to put in place measures to protect its young, vulnerable child patients.

29. By concealing Archibald's abuse and delaying a full accounting, Rockefeller benefitted as evidence grew stale and victims died. *See Report, pp. 2, 4, 14, 16 n.18.*

30. On September 26, 2018, Rockefeller sent a letter ("the September Letter") to thousands of its former child patients, requesting information about their experience with Archibald.

31. In a public statement posted on its website on October 5, 2018, Rockefeller publicly acknowledged that Dr. Archibald had "engaged in certain inappropriate conduct during patient examinations" and "deeply regret pain and suffering caused to any of Dr Archibald's former patients."

32. On October 18, 2018, Rockefeller issued a statement saying that it was "appalled" to hear of Dr. Archibald's "sexual misconduct" and "reprehensible behavior" and "deeply regret[ed]" the pain and suffering inflicted on his victims.

33. On November 9, 2018, Rockefeller issued another letter to victims declaring, "We profoundly apologize to those patients who experienced pain and suffering as a result of Dr. Archibald's reprehensible conduct."

34. In January 2019, the New York State legislature passed the CVA which Governor Cuomo signed into law in February 2019, enacting landmark statute of limitations reform for child sex abuse victims and opening a one-year one-time window reviving lapsed claims beginning on August 14, 2019.

35. On May 23, 2019, Debevoise & Plimpton issued its Report detailing "widespread" and "pervasive" sexual abuse by Archibald at Rockefeller. After interviewing approximately 900 people, Debevoise & Plimpton concluded:

Based upon all of the information collected, it is clear that Archibald, taking advantage of his position as a trusted and respected physician and researcher, engaged in a widespread pattern of misconduct and sexually abused many children at the Hospital over the course of many years while offering patients medical care and treatment. ***

It is clear that Dr. Reginald Archibald engaged in acts of sexual misconduct and sexual abuse towards many of his pediatric patients while employed at RUH... The volume of patients who have now come forward with accounts of being subject to sexual misconduct and abuse by Archibald also shows that his misconduct was pervasive.

Report, pp. 2, 25-26.

36. The Report detailed many of the same types of abuse suffered by Plaintiff. For example, the Report acknowledged Archibald's collection of semen which appeared nowhere in Archibald's protocols, consent forms, or medical records. The Report concluded that these

activities constituted sexual abuse and not legitimate research or treatment.

Many male former patients...reported that Archibald took semen samples from them during some visits. He did so by having them masturbate while he was present or by physically manipulating them to ejaculation. Although he denied it, it is clear that Archibald frequently took semen samples and did so without sufficient medical or research justification. While such a procedure could have had legitimate medical or research purposes to assess sexual maturity or function, the evidence shows here, and we find, that Archibald's taking of semen samples constituted sexual abuse rather than a legitimate medical or research procedure.

Report, p. 9. As the Report explained, "If the taking of semen samples was legitimate, we would expect the procedure to be documented...." Report, p. 9.

STATEMENT OF FACTS

37. At all relevant times herein, Rockefeller held itself out as a preeminent medical research institute which maintained the highest standards and utilized the most recent medical research protocols and safeguards for human subject research.

38. at all relevant times herein, Rockefeller approved Archibald's medical research and provided him with physician privileges including regular access to and unsupervised one-on-one interaction with child research and treatment subjects, including Plaintiff.

39. At all relevant times herein, Archibald was on the staff of, acted as an agent of, and served as an employee of Rockefeller.

40. At all relevant times herein, Archibald was acting in the course and scope of his employment with Rockefeller.

41. At all relevant times herein, Archibald had or used an office or examination room on the premises of Rockefeller.

42. At all relevant times herein, Rockefeller provided Archibald with the examination room, photographic equipment, and other instrumentalities he used to sexually abuse and exploit Plaintiff.

43. At all relevant times herein, Plaintiff was under the care, custody, and control of Rockefeller while he was on its premises during his examinations by Archibald.

44. Plaintiff and his parents reasonably relied upon the acts and representations of Rockefeller, their agents, servants, and employees, and reasonably believed that Archibald was an agent and/or employee of defendant and had been vetted by and was supervised by Rockefeller.

45. At all relevant times herein, Plaintiff and his parents trusted Archibald because Rockefeller held Archibald out as someone who was a highly respected Doctor and medical researcher, and was someone who was safe, and could be trusted with the care, custody, treatment, examination and control of Plaintiff.

46. Based on the representations of Rockefeller that Archibald was safe and trustworthy, Plaintiff and his parents allowed Plaintiff to be in the care, custody, and control of Rockefeller, including the times when Plaintiff was sexually abused by Archibald.

47. Neither Plaintiff nor his parents would have allowed Plaintiff to be in the care, custody, or control of Rockefeller or Archibald if Rockefeller had disclosed to Plaintiff or his parents that Archibald was not safe and was not trustworthy, and that he in fact posed a danger to Plaintiff in that Archibald was likely to sexually abuse Plaintiff.

48. Archibald used his position at Rockefeller to gain the Plaintiff's trust and to obtain control over him as part of his plan to sexually abuse and exploit him.

49. Archibald used his position of trust and authority at Rockefeller to sexually abuse and exploit the Plaintiff (who was a minor during Archibald's examinations of him) multiple times using Rockefeller's instrumentalities while Plaintiff was in the care, custody, or control of Rockefeller on Rockefeller's premises.

50. At all relevant times, Defendant, its agents, servants, and employees, knew or should have known that Archibald was sexually abusing and exploiting children.

51. Upon information and belief, at all relevant times herein, Defendant, its agents, servants, and employees knew or should have known that Archibald's sexual abuse and exploitation was ongoing.

52. Upon information and belief, Defendant, its agents, servants, and employees knew or should have known before and during Archibald's sexual abuse and exploitation of Plaintiff that he used his position at Rockefeller to groom and to sexually abuse children.

FIRST CAUSE OF ACTION
NEGLIGENCE

53. Plaintiff re-alleges the paragraphs set forth above and below.

54. At all relevant times herein, Plaintiff was a minor child and a patient of Archibald's at Rockefeller.

55. Archibald induced Plaintiff's parents and Plaintiff to permit Plaintiff to become Archibald's patient and visit Rockefeller under the guise of performing a growth study for and/or delivering free medical treatment to him.

56. According to Rockefeller's records, Plaintiff visited Archibald at Rockefeller from approximately 1975 to 1978 when he was approximately 13 to 17 years old.

57. During Plaintiff's visits to Rockefeller, Archibald sexually abused and assaulted Plaintiff by unlawfully touching and fondling Plaintiff's genitals and by forcing Plaintiff to sit on his lap and by instructing him and assisting him to masturbate.

58. These acts of sexual abuse and exploitation qualify as one or more of the predicate crimes grounding the extension or revival of child sexual abuse claims under the CVA.

59. At all relevant times herein, Rockefeller owed a duty of care to keep its patients, especially its minor patients, safe from sexual abuse by its doctors and staff under its supervision and control, including on hospital premises.

60. At all relevant times herein, a special relationship existed between Rockefeller and

Plaintiff and imposed on Rockefeller a duty to exercise such care as would a parent of ordinary prudence in comparable circumstances.

61. At all relevant times herein, Rockefeller acted through its board of trustees, employees, and other agents, and is vicariously liable as a principal for the actions those agents took within the scope of their employment or other agency authority, whether actual or apparent.

62. At all relevant times herein, Plaintiff and his parents believed that Rockefeller would exercise such care as would a parent of ordinary prudence in comparable circumstances when it assumed supervision, care, custody, and control of Plaintiff.

63. At all relevant times, Rockefeller was negligent in failing to exercise the degree of care a parent of ordinary prudence would exercise by (i) failing to take reasonable steps to supervise, discipline and/or discharge Archibald, (ii) failing to fire or dismiss Archibald, (iii) failing to train the staff at Rockefeller to recognize and prevent child sexual abuse, (iv) failing to warn Plaintiff and/or Plaintiff's parents of the unreasonable risk posed by Archibald, (v) failing to take reasonable steps to protect Plaintiff, (vi) failing to create a safe environment, and (vii) creating an environment posing an unreasonable risk of sexual abuse and other harm to Plaintiff.

64. In breaching these duties, Rockefeller acted willfully and in conscious disregard of any need to protect Plaintiff from Archibald.

65. By reason of Rockefeller's wrongful acts, Plaintiff sustained personal physical injury and physical sickness, including emotional distress originating from and attributable to that personal physical injury and physical sickness, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, family turmoil and loss of faith, a severe shock to his nervous system, physical pain and mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Plaintiff has and/or will become obligated to

expend sums of money for medical expenses.

66. By reason of the foregoing, Plaintiff is entitled to compensatory damages in such sums as a jury would find fair, just and adequate.

67. By reason of the foregoing, Plaintiff is entitled to punitive damages in such sums as a jury would find fair, just and adequate.

68. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

SECOND CAUSE OF ACTION
NEGLIGENT HIRING, RETENTION AND SUPERVISION

69. Plaintiff re-alleges the paragraphs set forth above and below.

70. At all relevant times herein, Rockefeller had a duty to supervise and prevent known risks of harm to its minor patients by its doctors and staff.

71. At all relevant times herein, Rockefeller was negligent in hiring, retaining and supervising its personnel, such as Archibald and others, who were careless, unskillful, negligent, reckless and acted in a willful and wanton manner in not possessing the requisite knowledge and skill of doctors and hospital staff who should have properly been supervising the doctors and hospital staff to ensure the safety of its minor patients.

72. At all relevant times herein, Rockefeller knew or should have known that Archibald sexually abused and/or had the propensity to sexually abuse children and did nothing to stop it.

73. As a result of such negligent hiring, supervising and retention, Plaintiff sustained personal physical injury and physical sickness, including emotional distress originating from and attributable to that personal physical injury and physical sickness, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, family turmoil and loss of faith, a severe shock to his nervous system, physical pain and

mental anguish, and emotional and psychological damage, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature, and Plaintiff has and/or will become obligated to expend sums of money for medical expenses.

74. By reason of the foregoing, Plaintiff is entitled to compensatory damages in such sums as a jury would find fair, just and adequate.

75. By reason of the foregoing, Plaintiff is entitled to punitive damages in such sums as a jury would find fair, just and adequate.

76. The amount of damages sought exceeds the jurisdiction of all lower courts which would otherwise have jurisdiction.

THIRD CAUSE OF ACTION
OUTRAGEOUS CONDUCT CAUSING EMOTIONAL DISTRESS

77. Plaintiff re-alleges the paragraphs set forth above and below.

78. As detailed above and below, Rockefeller's reckless conduct in failing to protect Plaintiff from sexual abuse and exploitation was so shocking and outrageous that it exceeds the reasonable bounds of decency as measured by what the average member of the community would tolerate, and demonstrates utter disregard of the substantial probability of the consequences that would follow, specifically, the repeated, decades-long, pervasive sexual abuse and exploitation by Archibald of Plaintiff and many others.

79. Plaintiff suffered severe emotional distress, that is, emotional distress that is of such intensity and duration that no reasonable person should be expected to endure it.

80. There is no excuse or justification for Rockefeller's conduct.

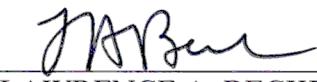
81. It was reasonably foreseeable that such conduct would result in the sexual abuse of or other severe harm to Plaintiff.

82. The outrageous conduct proximately caused Plaintiff's sexual abuse and

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against defendant Rockefeller for his causes of action, together with compensatory and punitive damages, together with interest, costs and disbursements pursuant to their causes of action and such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 20, 2019



LAWRENCE A. BECKENSTEIN, ESQ.
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Attorney(s) for Plaintiff
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ATTORNEY VERIFICATION

Lawrence A. Beckenstein, an attorney admitted to practice in the courts of New York State hereby affirms under penalty of perjury that: I am attorney for the plaintiff in the within action; I have read the foregoing complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true based upon documents in my file and investigation. The reason this verification is made by me and not by the Plaintiff is because the Plaintiff does not reside in the county where I maintain my office.

Dated: New York, New York
August 20, 2019

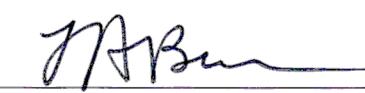


LAWRENCE A. BECKENSTEIN, ESQ.

ATTORNEY VERIFICATION

Lawrence A. Beckenstein, an attorney admitted to practice in the courts of New York State hereby affirms under penalty of perjury that: I am attorney for the plaintiff in the within action; I have read the foregoing complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true based upon documents in my file and investigation. The reason this verification is made by me and not by the Plaintiff is because the Plaintiff does not reside in the county where I maintain my office.

Dated: New York, New York
August 20, 2019



LAWRENCE A. BECKENSTEIN, ESQ.